

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Objection to the Claims

In the Office Action dated October 6, 2009, claims 1-22 were objected to because in claim 1, “the auditory processing location” lacks antecedent basis.

Claim 1 has been amended to obviate the objection. Applicant therefore respectfully requests that the objection be withdrawn.

§102 Rejections

Claims 1-3, 13-19, 21-25, and 27 were rejected under 35 U.S.C. §102(b) as being unpatentable over Finkenzeller et al (U.S. 5,954,667). Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant submits that Finkenzeller et al fails to teach or suggest all of the limitations recited in amended independent claim 1, particularly in the arrangement recited the claim. For instance, amended independent claim 1 recites “a diagnostic analyzer operably configured to characterize the AER signal and to compare the characteristics to at least one predetermined AER characteristic, wherein the at least one predetermined AER characteristic is associated with a neurological condition.” Finkenzeller et al fails to teach or suggest such limitations, among others, particularly in the arrangement recited in amended claim 1. Accordingly, Finkenzeller et al fails to anticipate amended claim 1 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Amended independent claim 23 recites “comparing the AER data characteristics to at least one predetermined AER characteristic with the data analyzer, wherein the at least one predetermined AER characteristic is associated with a neurological condition.” Finkenzeller et al fails to teach or suggest such limitations, among others, in amended claim 23. Accordingly, Finkenzeller et al fails to anticipate amended claim 23 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty.

§103 Rejections

Claims 4-6, 8-10, and 30-32 were rejected under 35 U.S.C. §103(a) as being obvious over Finkenzeller et al in view of Lencioni, Jr. (U.S. 4,219,028). Claims 7 and 20 were rejected under 35 U.S.C. §103(a) as being obvious over Finkenzeller et al. Claims 11, 26, and 28 were rejected under 35 U.S.C. §103(a) as being obvious over Finkenzeller et al in view of John (U.S. Pub. 20050018858). Claim 12 was rejected under 35 U.S.C. §103(a) as being obvious over Finkenzeller et al in view of John and in further view of Zoth et al (U.S. 6,786,873). Claim 29 was rejected under 35 U.S.C. §103(a) as being obvious over Finkenzeller et al in view of Zoth. Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the Office must give due consideration to all of the limitations of a claim. Obviousness rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render any of the present claims obvious.

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in each independent claim in accordance with MPEP 2143.03. For instance, as noted above with respect to the §102 rejection of amended claim 1, Finkenzeller et al fails to teach or suggest certain limitations of amended claim 1. Applicant further submits that, even in combination with Finkenzeller et al and in combination with each other, Lencioni, Jr., John, and Zoth fail to make up for this deficiency of Finkenzeller et al. Applicant therefore submits that

the combined art of record fails to teach or suggest all of the limitations of amended claim 1. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 1 obvious in accordance with MPEP 2143. Since claims 4-12 depend from claim 1, and since the combined art of record fails to render amended independent claim 1 obvious by failing to teach or suggest all of the limitations of amended claim 1, the combined art of record also fails to render claims 4-12 obvious in accordance with MPEP 2143. Furthermore, claims 4-12 include additional limitations beyond those recited in amended claim 1, thus forming independent bases for non-obviousness. Applicant therefore respectfully requests that the rejections of claims 4-12 be withdrawn.

Similarly, Applicant has noted above with respect to the §102 rejection of amended claim 23, Finkenzeller et al fails to teach or suggest certain limitations of amended claim 23. Applicant further submits that, even in combination with Finkenzeller et al and in combination with each other, Lencioni, Jr., John, and Zoth fail to make up for this deficiency of Finkenzeller et al. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of amended claim 23. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 23 obvious in accordance with MPEP 2143. Since claims 26, 28, and 29-32 depend from claim 23, and since the combined art of record fails to render amended independent claim 23 obvious by failing to teach or suggest all of the limitations of amended claim 23, the combined art of record also fails to render claims 26, 28, and 29-32 obvious in accordance with MPEP 2143. Furthermore, claims 26, 28, and 29-32 include additional limitations beyond those recited in amended claim 23, thus forming independent bases for non-obviousness. Applicant therefore respectfully requests that the rejections of claims 26, 28, and 29-32 be withdrawn.

Conclusion

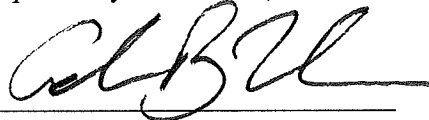
While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an

admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 369-4811 or via e-mail at aulmer@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. B. Ulmer', is written over a horizontal line.

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